

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	:	
JOVAN DAVIS,	:	
	:	
Plaintiff,	:	21-CV-8485 (VEC)
	:	
-against-	:	<u>ORDER ADOPTING</u>
	:	<u>REPORT &</u>
COMMISSIONER OF SOCIAL SECURITY,	:	<u>RECOMMENDATION</u>
	:	
Defendant.	:	
-----X	:	

VALERIE CAPRONI, United States District Judge:

WHEREAS on October 14, 2021, Plaintiff Jovan Davis filed a complaint against the Commissioner of Social Security (the “Commissioner”), seeking review of the Social Security Administration’s denial of his application for disability insurance benefits and supplemental security income, *see* Compl., Dkt. 1;

WHEREAS on October 17, 2021, the Court referred this case to Magistrate Judge Barbara C. Moses for general pretrial management and for the preparation of reports and recommendations (“R&Rs”) on any dispositive motions, *see* Referral Order, Dkt. 7;

WHEREAS on September 1, 2022, Plaintiff moved for judgment on the pleadings, *see* Pl. Not. of Mot., Dkt. 20;

WHEREAS on October 28, 2022, the Commissioner cross-moved for judgment on the pleadings, *see* Comm’r Not. of Mot., Dkt. 23;

WHEREAS on August 18, 2023, Magistrate Judge Moses entered an R&R recommending that Plaintiff’s motion be denied, the Commissioner’s motion be granted, and that the case be dismissed, *see* R&R, Dkt. 26;

WHEREAS in the R&R, Judge Moses notified the parties that, pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), they had fourteen days to file written objections to the R&R's findings, *id.* at 27;

WHEREAS Judge Moses further noted that failure to file objections would result in both the waiver of objections and the preclusion of appellate review, *id.*;

WHEREAS no objections were filed by either party;

WHEREAS in reviewing an R&R, a district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge,” 28 U.S.C. § 636(b)(1)(C);

WHEREAS when, as here, no party objects to the R&R, the Court may accept the R&R provided that “there is no clear error on the face of the record,” *Heredia v. Doe*, 473 F. Supp. 2d 462, 463 (S.D.N.Y. 2007) (quoting *Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985)); *see also* Fed. R. Civ. P. 72(b) advisory committee's note;

WHEREAS an error is clear when the reviewing court is left with a “definite and firm conviction that a mistake has been committed,” *see Cosme v. Henderson*, 287 F.3d 152, 158 (2d Cir. 2002) (quoting *McAllister v. United States*, 348 U.S. 19, 20 (1954)); and

WHEREAS careful review of the well-reasoned R&R reveals that there is no clear error;

IT IS HEREBY ORDERED that the R&R is adopted in full, Plaintiff's motion for judgment on the pleadings is DENIED, the Commissioner's cross-motion for judgment on the pleadings is GRANTED, and this case is DISMISSED.

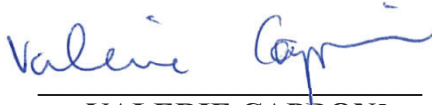
IT IS FURTHER ORDERED that because the R&R gave the parties adequate warning, *see* R&R at 27, the failure to file any objections to the R&R precludes appellate review of this decision. *See Mario v. P & C Food Markets, Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) (“Where

parties receive clear notice of the consequences, failure timely to object to a magistrate's report and recommendation operates as a waiver of further judicial review of the magistrate's decision.” (citing *Small v. Sec'y of Health & Human Servs.*, 892 F.2d 15, 16 (2d Cir. 1989) (per curiam))).

The Clerk of Court is respectfully directed to enter judgment, to terminate all open motions, and to close the case.

SO ORDERED.

Date: September 5, 2023
New York, New York



VALERIE CAPRONI
United States District Judge